IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 168 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SULEMAN RAHU BAYAD

Versus

GADHVI BALDEV DEVJI

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Appearance:

MR YS MANKAD for Petitioner

MR IM KAPOOR for MR SK PATEL for Respondent No. 1

MR KATHABEN GAJJAR for Respondent No.2

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/04/2000

C.A.V. JUDGEMENT

#. This is a Criminal Revision Application filed by the original complainant Suleman Rahu Bayad and mother of deceased Zushab Noormohammad Bayad who met with a

vehicular accident on or about 21-1-1985, under Section 401 read with Section 397 of the Criminal Procedure Code, 1973 (Cr.P.C. in short) challenging an order of acquittal passed by the learned J.M.F.C. Anjar by rendering his judgment Exh. 86 on 11-1-1988 in Criminal Case No. 453 of 1985 which was there on his file.

#. The facts leading to this Criminal Revision Application in a nut-shell are as follows:-

As per complaint (Exh. 56) which was lodged by present Revision-Petitioner No.1, when complainant was present at Anjar bus station at about 4.00 to 4.30 p.m. on 21-1-1985 he came to know that when Zushab Noormohammad Bayad by driving his rickshaw with passengers going towards Nagalpar, his rickshaw met with a vehicular accident by one S.T. bus and that Zushab Noormohammad Bayad who was driver of the rickshaw and other passengers in that rickshaw had sustained serious bodily injuries and further that the rickshaw was also damaged. Thereafter, he rushed to the spot of the incident. When he reached to place of incident, he came to know that Kantilal Bharmal, Shambhubhai Dulabhai Aayar, Dalpat Pragji Rathod and Madadali Mahmad, and Gosai Harsagar Narsi all residents of Nagalpur were present when accident occurred. He also received an information that rickshaw driver and other passengers who had sustained injuries were being shifted to hospital. He also came to know that rickshaw driver and two girls who were passengers in rickshaw succumbed to injuries while they were under treatment in the hospital. He also came to know that one lady who was also one of the passengers in the rickshaw, died in the accident.

As per the case of the complainant present respondent No.1 Gadhvi Baldev Devji was driver of the S.T. bus No. GRT 7457 and he drove that S.T. bus in rash and negligent manner so as to endanger the human life as a result of which the S.T. Bus knocked down rickshaw as a result of which that rickshaw was capsized and three passengers travelling in rickshaw along with rickshaw driver died in the vehicular accident and therefore he lodged his complaint in Anjar Police Station which came to be registered as C.R. I. 6 of 1985 for offences punishable under Section 279, 427, 304-A, 337, 338 of the Indian Penal Code and also under Section 112 and 116 of the M.V.Act, 1939. That police case was investigated by the police officer and ultimately charge-sheet against Respondent No.1 was filed in the court of J.M.F.C. on 25-9-1985. That charge sheet came to be registered as Criminal Case No. 453 of 1985.

The charge against the accused, i.e. present respondent No.1 was framed on 2-1-1986. Thereafter prosecution examined about 17 witnesses. The prosecution also produced documentary evidence in support of the case for which charge was framed. The Court also examined one Topandas Lalji at Exh. 78 as court witness. Thereafter, on hearing the arguments of both the parties and after appreciating the evidence led by the prosecution witnesses as well as court witness the learned Magistrate rendered judgment Exh. 86 on 11-1-1988 and came to the conclusion that prosecution has failed to prove the case against accused, i.e., respondent No.1 and thereby he acquitted the accused for offences for which charge was framed. He also passed appropriate order for disposal of the muddamal articles.

#. Being aggrieved against and dissatisfied with the said order of acquittal, the original complainant, and the mother of the deceased driver of rickshaw have preferred this present Criminal Revision Application.

#. I have heard Shri Y.S. Mankad, the learned Advocate for both the petitioners, Shri I.M. Kapoor, the learned advocate for Shri J.K. Patel, the learned advocate for the respondent No.1 and Ms. Kathaben Gajjar, learned A.P.P for respondent No.2 at length, in detail. They have read the evidence led in the case. I have gone through the R & P of the original case papers.

#. Shri Y.S. Mankad, the learned advocate for the Revision-Petitioners has strenuously argued that the learned Magistrate has cursorily appreciated the evidence of witnesses and acquitted the accused. He has further argued that here in this case an evidence of important witness P.W. 16 Naran Puja (Exh. 60) is not appreciated in correct perspective and the learned Magistrate has concluded on incorrect appreciation of evidence of the witnesses and acquitted accused. He has further argued that looking to evidence on record accused i.e., respondent No.1 drove the S.T. bus with speed, when the Bus reached near the curve which was there on the road and therefore looking to casualty in the accident, the learned Magistrate ought to have inferred that accused drove the S.T.bus in rash and negligent manner and he ought to have convicted and sentenced the accused. Lastly, he has argued that looking to the evidence which is not correctly appreciated by the learned Magistrate the case should be remanded back to the trial court with a direction to reappreciate the evidence.

#. Shri I.M. Kapoor, the learned advocate for the respondent No.1 has argued that looking to an evidence led by the prosecution the learned Magistrate has come to a right conclusion and no inference can be drawn against the accused. He has further argued that there cannot be any dispute with regard to casualty in the accident because it was a gruesome accident in which four persons died in the accident and three persons sustained injuries. As per his arguments the important question which was required to be decided is as to whether the S.T. driver was rash and negligent in driving the S.T. bus and whether as a result of such rash and negligent driving, the accident occurred. Merely because there is casualty of four persons no inference can be drawn against the accused. He has further argued that there is no evidence with regard to rickshaw-driver as to how he was driving the rickshaw. This is necessary to come to the conclusion whether the rickshaw driver was driving the rickshaw with due care and caution by observing traffic rules. He has further argued that looking to an evidence rickshaw driver can be said to be negligent in driving the rickshaw. He has cited following two authorities in defence of accused:

(a) K.Chinnaswamy Reddy v. State of Andhra Pradesh and Another AIR 1962 SC 1788.

In this case Hon'ble Supreme Court has made it clear that it is open to a High Court in Revision to set aside the order of acquittal even at the instance of private parties though the State may not have thought fit to appeal. But this jurisdiction should be exercised by the High Court only in exceptional cases when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. It is further held by the Honourable Supreme Court that High Court can set aside a finding of acquittal in Revision only in exceptional cases.

(b). S. Guin and others v. Grindlays Bank Limited AIR 1986 SC 289.

In that case offences were committed on 31-10-1977. After trial the Magistrate by his judgment dated June 27, 1978 acquitted all the accused. Complainant - Grindlays Bank Limited filed the appeal in High Court of Calcutta in 1978, somewhere after 27-6-1978. In that case the High Court felt that the trial court had missed the essence of the offences with which the appellants had been charged and therefore there

was failure of justice. Hence it set aside the judgment of acquittal passed by the Magistrate and remanded the case for retrial. As against that order of remand of case to trial Court the accused preferred Criminal Appeal No. 848 of 1985 in the Honourable Supreme Court of India and the Honourable Supreme Court observed in paragraph 4 as follows:-

"We are of the view that following the above principle the High Court should have dismissed the appeal before it even if it disagreed with the view taken by the trial Court with regard to the gist of the offence punishable under Section 341 Indian Penal Code, having regard to the inordinate delay of nearly six years that had ensued after the judgment of acquittal, the nature and magnitude of the offences alleged to have been committed by the appellants and the difficulties that may have to be encountered in securing the presence of witnesses in a case of this nature nearly 7 years after the incident."

By observing thus the Honourable Supreme Court set aside the judgment of the High Court and restored the order of the acquittal passed in the case mainly on the ground of inordinate delay of about 7 years.

Above view is also reiterated by Hon'ble Supreme Court in case of Ramu Vs. Jagannath reported in 1994 Cr.L.J. 66(S.C.).

Shri S.K. Kapoor, the learned advocate for the accused i.e. respondent No.1 has argued that in this case the incident took place on 21.1.1985. Accused was acquitted by the learned Magistrate on 11-1-1988. This Criminal Revision Application is being heard in the month of March, 2000 and therefore practically about 12 years have elapsed and therefore looking to law laid down in case of S. Guin and others (supra) this Revision Application should be dismissed.

#. Here in this case, the prosecution had examined in all 17 witnesses and the trial court itself has examined one witness Topandas Lalji at Exh. 78 as court witness. The prosecution has produced documentary evidence consisting of panchnama of scene of offence, inquest panchnamas of deceased persons, post-mortem notes panchnamas of injuries seen on body of respective injured -witnesses, and complaint etc. etc. From arguments of both the parties and the evidence led in the case, the following facts are such that there cannot be any

dispute:

(A) Accident took place on 21-1-1985 at about 16.10 p.m. at the place shown in panchnama of scene of offence (Exh. 22). That place is at a distance of four kms, away from Anjar Police Station.

(B) Accident occurred in between the S.T. bus GRT 7457 of the route from Bhuj to Anjar via Jadur and rickshaw No. GTY 1198.

(C) That S.T.bus was being driven by the accused, i.e. respondent No.1. Said rickshaw was being driven by deceased Zusab Noormohamad Bayad, who died in the accident.

(D) There were in all six passengers in the rickshaw, out of which three died and three persons sustained injuries. It may be noted that in this case on hand, none of the S.T. passengers was examined by the prosecution.

(E) Following three panch witnesses were examined by the prosecution to prove the respective documents:-

(a) P.W.1 Harilal Hirji (Exh. 21) was a panch witness for panchnama of scene of offence (Exh. 22).

(b) P.W.2 Devshi Nanji (Exh. 25) was examined to prove inquest panchnamas (Exhs. 27, 30 and 31) and also for panchnamas of injuries noticed by panch witnesses on body of respective injured persons, namely, Exhs. 28 and 29.

(F) Adam Abdulla (Exh. 33) was examined for panchnama (Exh. 33) for articles being produced by complainant.

(G) The prosecution has examined some three outsiders:

(i) P.W.4 Kantilal Bharmal Exh. 37. He is the person who had shown the scene of offence to police. He had come at the place of scene of offence by driving another rickshaw GTB 6432 at about 5.00 to 5.30 p.m., i.e. after accident and he took injured lady, one male member and one child to the hospital. As per his evidence he did not notice S.T. driver

at the place. He did not notice the actual happening of the incident.

(ii) P.W.5 Dalpat Pragji (Exh. 38). He came to place of scene of offence after accident and he did not notice S.T. driver at the place.

(iii) P.W.6 Sambhubhai Bhulabhai (Exh. 39). He reached to place of incident after occurrence of accident and he did not notice S.T. driver at the place.

(H) The prosecution has examined some relatives of the deceased persons and injured persons:

(i) P.W.7 Bharatkumar Trikamji (Exh. 40). Injured Naran Puja was his maternal uncle, and injured Kashiben was his maternal grandmother, i.e., mother of Naran Puja.

(ii) P.W.8 Visanji Sivji Exh. 41. He is related to witness P.W. 7 Bharatkumar Trikamji referred to in (I) As per his evidence Bharatkumar Trikamji was son of his brother. He went to Government Hospital at Anjar after the accident.

(iii) P.W. 12 Keshav Ramji (Exh. 53) he is cousin of Naran Puja.

(iv) P.W.13 Suleman Rau (Exh. 55). Deceased Noormohammad was son of maternal uncle of this witness. He was a complainant. He is Revision Petitioner No. 1 in this present Criminal Revision Application.

(v) P.W.14 Rahmatbai Umar (Exh. 57) Mother of deceased Noormohammad who is a Revision Petitioner No.2 in this present Criminal Revision Application.

(I) Prosecution has examined P.W. 9 Dr. Mahendrakumar Amrutlal (Exh. 42). He performed post mortems of following four deceased persons and had prepared respective post mortem notes:

(a) Deceased Zusub Noormohammad Bayad (P.M.Note Exh. 43)

(b) Deceased Baby Alpa Naran Rathod (P.M. Note Exh. 44)

(c) Deceased infant child named Baba Naran Rathod (P.M.Note Exh. 45)

(d) Deceased Pushpaben (P.M. Note Exh. 46).

This doctor Mahendrakumar Amrutlal had examined

following three witnesses and had issued medical certificates:

(1) Induben (Medical Certificate Exb. 47)
(2) Naran Puja (Medical Certificate Exh. 48)
(3) Kasiben Puja (X Ray Exh. 49 and Medical Certificate Exh. 50).

#. So far as incident of accident is concerned and the persons who died in that accident and persons who sustained injuries in that accident, are concerned there is no serioius dispute. The only dispute taken by the accused is that he was not rash and negligent in driving the S.T. Bus. To prove the case as referred to in charge Exh. 18 the prosecution has examined three eye witnesses. To appreciate the evidence of such eye witnesses, following legal position is required to be kept in mind.

In case of Gurucharan Singh v. State of Himachal Pradesh, 1990(2) Cr.L.J. 543, it has been held that while dealing with cases of Road Accidents, care has to be taken that evidence adduced is sometimes thoroughly prejudicial against the motorist, chances of exaggerating the events are not sometimes uncommon. Witnesses are also influenced by prejudices against the offender. Therefore, simply because the life has been cut short, the matter has not to be approached with jaundice type. The matter has to be scanned, assessed and appreciated in right perspective.

In the case of State v. Ramakant Yeshwant Nagvencar AIR 1968 Goa 77 it has been held that what is rash and negligent driving would depend upon the facts of each case. There is a duty on every user of the road to exercise due care and caution while walking or driving. It is not necessary for the purposes of Section 279, IPC that the rash or negligent driving should result in an injury to life of any person or property. It is also not necessary for the prosecution to prove that at the time of the accident there was any person on the road. What is necessary for the prosecution to establish under Section 279 IPC is that the vehicle or car was driven on a public road in a manner so rash or negligent as to endanger human life.

The relationship between speed and rashness or negligence depends upon the place, time, condition of the road, nature of the traffic and such other like circumstances. A motor vehicle is meant to be driven in speed. It is not always that one who drives his vehicle

at a slow speed is a safe driver. So the speed with which the vehicle is driven is not always the deciding factor for coming to a finding whether he is driving rashly or negligently. Under the circumstances, speed is not the only criterion to come to a conclusion that driver of the vehicle was rash and negligent in driving the vehicle.

#. Here in this case, on hand prosecution relies mainly on three witnesses, who are alleged to be eye witnesses to the incident.

One of them is P.W. 11 Harshadgar Narsigar (Exh. 52). As per his evidence on the date of accident he was by driving his rickshaw No. GTY 893 coming from Anjar to Nagalpur at about 4.30 p.m. and at that time he saw that one S.T. bus was coming from Nagalpur side and was proceeding towards Anjar and at that time one rickshaw was going ahead of his rickshaw at a distance of about one field. and he saw that that rickshaw dashed against the S.T. at the place where there was a curve. On seeing this incident, he immediately rushed to the spot and he saw that passengers of the rickshaw were injured. He has further deposed that that bus was of the route of Bhuj to Anjar via Jadura and he did not see the driver of the S.T. at the place. He has further deposed that rickshaw was heavily damaged and glass of wind screen of the rickshaw were lying scattered on the road and he took the injured persons in his rickshaw to the hospital.

So this witness was an eye witness to the incident. This witness is not declared as hostile witness and therefore it can be said that prosecution relies on evidence of this witness. This witness has not uttered a single word about the speed of the S.T. bus. He has not deposed anything about rashness or negligence on part of the driver of the S.T. bus. He has merely deposed that rickshaw going ahead of rickshaw dashed against the S.T bus coming from Nagalpur side and therefore this witness has given a true and correct account of the accident. He has deposed that both the vehicles met with a vehicular accident on head on collision. Even the prosecution case is to the effect that both the vehicles collided with each other. Inquest panchnama Exh. 26 which was drawn for Alpaben Naran Rathod also speaks that both the vehicles collided with each other. Inquest panchnama Exh. 27 which was drawn for deceased Jethwa Pushpaben Trikamji also speaks that both the vehicles collided with each other. Exh. 30 which is an inquest panchnama which was drawn for deceased Zusab N Bayad and inquest panchnama Exh. 31

which was drawn for an infant child named Baba Naran Rathod also speak that both the vehicles dashed with each other.

##. Keeping in mind this evidence of eye witnesses who actually saw the accident it is necessary to know the details of panchnama of scene of offence Exh. 22. As per the panchnama Exh. 22, witness P.W.4 Kantilal Bharmal had shown the place of accident to the panch witnesses and police officer. It was drawn on that very day during the period from 18.00 to 19.30 hours. As said earlier, accident occurred at about 16.10 p.m. and therefore that panchnama of scene of offence was drawn at the possible earliest point of time. If we read this panchnama Exh. 22 in between the lines we find that Anjar is towards east while Nagalpur is in direction in between west and south. Road is of width of 12'. There was a kutcha road of width of 10' towards northern side while there was a kutcha road of width of 5' towards southern side and therefore it can be said that road was of width of about 27'. As per panchnama road which was leading from eastern side was taking curve in direction in between west and south corner. S.T. bus was coming from Nagalpur side and was proceeding towards Anjar. While rickshaw was coming from Anjar side and was proceeding towards Nagalpur and therefore correct side for the S.T. bus was towards northern side while for rickshaw its correct side was towards southern side. At this stage, it may be noted that capacity of rickshaw was for only three passengers, but in this case, rickshaw which met with a vehicular accident was carrying six passengers and therefore it can be said that it was an overloaded rickshaw. As per panchnama exh. 22 S.T bus was found more towards northern side because as per panchnama rickshaw was found on kutcha road leaving tar road on southern side and distance in between S.T and rickshaw was about 16' and that rickshaw was in a slanting direction from the S.T. bus. Front side of the S.T. bus was towards eastern side, i.e. Anjar side while front side of rickshaw was towards western side, i.e., towards Nagalpur side. S.T. bus was damaged and its damage was assessed at about Rs.100/-. Rickshaw was damaged and that damage was assessed at Rs.4800/-. That rickshaw was found in a capsized condition on kutcha road. That rickshaw was at a distance of about 15.5' from rear portion of the S.T. bus towards northern side. Looking to that distance and looking to the width of the road it can be said that S.T. bus was more towards northern side, i.e. on its correct side. As per panchnama Exh. 22 rear seat of the rickshaw in a loose condition was found lying on road at a distance of 6.5'

towards Nagalpur side and from that rear seat in loose condition which was lying on the road, there was a front seat of rickshaw in loose condition at a distance of 3' and from that front seat in loose condition lying on the road, at a distance of 6' there was a curve where pieces of glass were found in scattered condition. Looking to this position of rickshaw, its seats in loose conditions found lying on the road, it can be said that S.T. bus had already negotiated the curve and had come on the straight road leading to eastern side and rickshaw had yet to negotiate the curve and therefore though witnesses have deposed that accident occurred near curve. Panchnama speaks that accident occurred on a straight road.

##. The first eye witness Harshadgar Narsigar (Exh. 52) has not deposed that at that time there was a traffic of vehicles on the said road. Looking to width of the road, rickshaw could have easily passed on its correct side as there was no other traffic coming from opposite direction except that of only S.T. bus with which that rickshaw collided and therefore looking to this evidence of panchnama and evidence of Harshadgar Narsigar, S.T. bus was not going with speed. The driver of the S.T. bus was not rash and negligent. S.T. bus had already negotiated the curve and therefore from this evidence it clearly appears that rickshaw driver was negligent looking to the heavy damage caused to overloaded rickshaw. For a moment, if it is believed that S.T. bus was going with full speed then impact would be heavy after collision with the rickshaw and right side of the front of S.T. bus would have received heavy damage looking to its speed. Here in this case, the damage of S.T. bus is assessed at Rs.100/- and that damage was caused to front right side of the S.T. bus and thus the learned Magistrate has appreciated the evidence in its correct perspective.

##. Shri Y.S. Mankad has vehemently argued that an evidence of P.W.16 Naran Puja (Exh. 60) is not correctly appreciated by the learned Magistrate. As per evidence of P.W. 16 Naran Puja (Exh. 60) he is an interested witness because he is a relative of Kashiben who was one of the passengers in the rickshaw and who had sustained injuries vide medical certificate, Exh. 50. Deceased Pushpaben was daughter of his sister and therefore as he being near relative of injured as well as deceased persons, he is an interested witness to see that accused S.T. driver is convicted anyhow. He has deposed in his evidence that on the date of incident, i.e. 21-1-1985 at about 4.30 p.m. he was travelling in rickshaw No. GRT

7457 in company of his mother, wife and Pushpaben, daughter of his sister and others. He has further deposed that at that time one S.T. bus came from opposite direction and it came with full speed and that S.T. bus suddenly took a turn towards rickshaw in which he was travelling and that S.T. bus dashed against the rickshaw from opposite direction and all the persons who were travelling in the rickshaw were thrown off, outside from the rickshaw and he sustained injuries. Naturally, when this witness has sustained injuries in the incident he would say that S.T. bus was coming with full speed.

##. Shri I.M. Kapoor, the learned advocate for respondent No.1 has argued that concept of speed is a subjective opinion because a youngster who drives his motor cycle with full speed will never say that he was going with a full speed but an elderly person who sees him going on motor cycle would certainly say that the youngster was going with full speed. If `A' a matured person who drives the vehicle with reasonable speed is seen by `B' younger person then that younger person will certainly say that `A' was going with slow speed and therefore concept of the speed is a subjective satisfaction of an individual person and therefore merely because this Naran Puja has deposed that S.T. bus was coming with full speed it does not mean that it was coming with excessive speed. There is a distinction between full speed and excessive speed and as said earlier speed is not the only criterion to decide rashness and negligence. As said earlier, relationship between speed and rashness or negligence depends upon the place, time, condition of the road, nature of the traffic and such other like circumstances. Here, in this case on hand road was of width of around 27'. There was no traffic on the road. Accident occurred at about 16.10 hours, i.e., in day light. S.T. bus had already negotiated the curve. Looking to these circumstances, if it was seen by Naran Puja that S.T. bus came with full speed then it cannot be inferred that S.T. driver was rash and negligent in driving the S.T. bus.

##. Third eye witness is P.W. 15 Natwarlal Bhikhabhai (Exh. 58). He was a conductor in the S.T. bus. He has deposed that on the date of accident he was Conductor in the S.T. bus of the route of Bhuj-Anjar via Jadura. He has further deposed that accident occurred at the curve of Nagalpur and at that time Baldevbhai Gadhvi (the present respondent No.1) was the S.T. driver and he identified the accused before the court to be the driver of that S.T. bus on the fateful day of the incident. He has only deposed that he was busy in work of issuing

tickets to the passengers and he did not see as to how the accident occurred but as per his evidence S.T. bus and rickshaw collided with each other.. He has no idea as to towards which side that rickshaw was proceeding and therefore this witness has also not deposed anything about rashness or negligence on the part of the S.T. bus driver.

##. Prosecution also relies on an evidence of P.W. 10 Madadali Mamad. This witness is not in real sense an eye witness to the accident. He has deposed that he was present in one Wadi near the place of accident occurred. He heard some sound and therefore he came to the place of accident. He has described the situation of road and S.T. bus and rickshaw. As per his evidence the road was a tar road of width of 10' to 12' and on both the sides there was a shoulder of 4 to 5'. He has further deposed that road leading from Anjar side takes a slight turn in a curve on southern side. S.T. bus was coming from Nagalpur and was going towards Anjar while rickshaw was coming from Anjar and was going towards Nagalpur. He has categorically deposed that S.T. bus was on the left side of the road whereas rickshaw was also on the left side of the road. In spite of this, both vehicles dashed with each other. He has deposed nothing about speed or any of the circumstances to be inferred against driver of S.T. bus for rash and negligence and therefore from the evidence of this witness also it cannot be that S.T. driver was rash and negligent in driving the S.T. bus.

##. Shri Mankad has vehemently argued that learned Magistrate has not appreciated the evidence of eye witnesses whose evidence is discussed hereinabove in its correct perspective. In case of Narayanprasad v. State of Rajasthan and another reported in AIR 1978 Rajasthan 162 (Full Bench decision) it is held that asking the revisional court to say that this piece of evidence should have weighed more than the other is nothing more than seeking a reassessment of evidence. It has categorically stated in this authority that appreciation of evidence is a mental process involving selection, assessment and conclusion which statement had to weigh and how much cannot be readily laid down. In view of this, the learned Magistrate before whom the witnesses gave evidence had noticed the demeanour of the witnesses and he has appreciated the evidence of the witnesses keeping in mind the contents of panchnama and complaint also. Looking to appreciation of evidence which this court has also made, it cannot be said that the learned Magistrate has failed in appreciating the evidence of witnesses in its correct perspective and therefore this

Court finds that there is nothing otherwise to come to a different conclusion than what the learned Magistrate has drawn after appreciating the evidence.

##. Shri Y.S.Mankad the learned Advocate has, while summing up his arguments, requested to remand the case to trial Court for re-appreciation of evidence of witnesses examined by Prosecution. In view of Section 401(1) Cr.P.C. read with Sec. 386(a) Cr.P.C., this Court can remand the case only for re-trial and not for ~only re-assessment~ of the evidence. This Court finds no cogent and satisfactory reason for remanding the case to trial Court for re-trial and that too after about 15 years.

##. In case of Narayanprasad (supra) the Full Bench of the Rajasthan High Court has reiterated the legal position with regard to power of the High Court and scope in this type of Criminal Revision Application. The revisional jurisdiction is normally to be exercised only in exceptional cases where there is glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice. The learned advocate for the Revision Petitioner has not satisfied this Revisional Court that there is a glaring defect in the procedure adopted by the learned Magistrate and that there is a manifest error of point of law. He has failed to satisfy this Court that there has been a flagrant miscarriage of justice.

##. In view of discussion made hereinabove this is not a fit case in which this Revisional Court should interfere with the finding of the learned Magistrate who has come to a definite conclusion after appreciating the evidence on record. He has assigned the reasons for arriving at a particular conclusion and when that reasons are plausible reasons, then this court is of the view that this court should not substitute its own conclusion based on different reasons, in place of conclusion arrived at by the learned Magistrate.

##. Hence in view of above discussion, this Criminal Revision Application fails and it deserves to be dismissed and accordingly it is hereby dismissed by confirming the judgment Exh. 86 dated 11.1.1988 rendered in Criminal Case No. 453 of 1985 by the learned Judicial Magistrate First Class, Anjar.

(H.H.Mehta, J)